CRIMINAL REVISION APPLICATION NO.118 OF 1996.

Date of decision:18-6-1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. B.N. Keshwani, advocate for petitioner.
Mr. S.R. Divetia, A.P.P. for respondent-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?-YES

2. To be referred to the Reporter or not?-YES

3. Whether their Lordships wish to see the fair copy of judgment?-NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?-NO

5. Whether it is to be circulated to the Civil Judge?-NO

Coram: R. R. Jain, J.

18th June , 1996.
CAV Judgment:

Aggrieved by the order dated 3.1.1996 passed by the learned Additional City Sessions Judge, Court No.13, Ahmedabad, by which Criminal Misc. Application No.3350 of 1995 moved under proviso to Section 167 (2) of Criminal Procedure Code ('the Code' for short) came to be rejected, the petitioner/accused has filed this Revision Application. It would be pertinent to note that initially the petitioner filed Misc. Criminal Application with a request to grant bail but during the course of hearing the same was converted into Revision Application as legality of the order passed by the lower court is under challenge. The petitioner has prayed for

setting aside impugned order and grant of bail on appropriate terms.

As averred, the petitioner has been charged for commission of offence punishable under Section 20 (b) (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act" or 'the Act' for convenience and brevity). As the prosecution did not complete investigation and file charge-sheet within the stipulated period as prescribed under Section 167 (2) of the Code the petitioner moved application for bail popularly known as 'default bail' or "compulsive bail" but the same was rejected. In order to appreciate the contention, it would be worthwhile to place on record relevant dates of some of the important events which go to the roots of merits.
The petitioner was arrested on 19.9.1995 and was sent to judicial custody on 20.9.1995. Thus, period of 60 days expired on 18.11.1995. First bail application being Criminal Misc. Application No.3241 of 1995 was filed on 6.12.1996 and decided on 14.12.1995. Second application for bail, i.e., Criminal Misc. Application No.3350 of 1995 was filed on 20.12.1995 and decided on 3.1.1996. Both these applications were rejected. The charge-sheet was submitted on 12.12.1995.

Since the question pertains to default bail and failure on the part of prosecution to complete investigation within stipulated period of 60 days or 90 days, as the case may be, it would be necessary to clarify the statutory period applicable in this case, though it is not relevant for the purpose of deciding the controversy. The petitioner has alleged that he is charged for offence under Section 20 (b) (i) of the Act which provides punishment for a period which may extend to 5 years and fine which may extend to Rs.50,000/- If this is true then the statutory period during which the investigation is required to be completed and chargee-sheet to be submitted would be 60 days as provided under Section 167 (2) proviso (a) (ii). Of course, in Criminal Misc. Application No.3350 of 1995 and order passed the offence alleged to have been committed is mentioned as under Section 20 of the Act. But in paragraph 1 of the first bail application, i.e., Criminal Misc. Application No.3241 of 1995 the petitioner has referred to offence alleged to have been committed under Sections 20 and 22 of the Act. If the petitioner is also charged for offence under Section 22 of the Act then the statutory period available to the prosecution for completion of investigation would be 90 days as provided under Section 167 (2) proviso (a) (i) of the Code and thus a doubt is

created. Since none of the parties has clarified this aspect, without expressing my opinion about the statutory period available to the prosecution for completion of investigation I proceed with the assumption that the petitioner is charged for commission of offence only under Section 20 (b) (i) of the Act which provides for imprisonment for a period of 5 years and thus proceed with assumption that the charge-sheet should have been filed within the period of 60 days.

Undisputedly, the petitioner was arrested on 19.9.1995 and was sent in judicial custody on the very next day i.e., 20.9.1995. Now, proceeding on assumption as above, period of 60 days expired on 18.11.1995. Admittedly, the charge-sheet was submitted on 12.12.1995. Thus, undisputedly was submitted beyond the statutory period. First application for bail being Criminal Misc. Application No.3241 of 1995 was moved on 6.12.1995 and decided on 14.12.1995. Thus was admittedly filed before charge-sheet was filed but decided after the charge-sheet was submitted. Admittedly, second bail application was preferred and disposed of after the charge-sheet was submitted. In the background of these facts, Mr. Keshwani, learned advocate for the petitioner, has raised following points:

1. Section 167 of the Code does not contemplate filing of written application by accused.
2. Consequently, invoking provisions of Section 167 (2) of the Code, it is the duty of the courts to release the accused on bail on expiry of statutory period if investigation is not over and inform the accused of his right of being released on bail.
3. As a corollary the court has to pass appropriate order of 'default bail' and inform the accused to furnish bail.

Since the controversy is about the scope and interpretation of Section 167 of the Code empowering courts to authorise detention of accused for a particular period, it would be worthwhile to reproduce the text of Section 167 as under:

"167. Procedure When investigation cannot be completed in twenty four hours.--

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or

information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,--

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter.

(b) no Magistrate shall authorise detention in any custody under this section unless

the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.-- For the avoidance of doubts, it is hereby declared that notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.-- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer

making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."

On bare look of this section it becomes evidently clear that the provisions are mandatory in nature calling for strict and meticulous compliance by the courts and non-compliance of said provisions would be violative of Article 21 of the Constitution of India which guarantees right of freedom and liberty as held by the Supreme Court in the case of Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1377. In paragraph 3 of the judgment, the Supreme Court has also discussed about the duty of Magistrate in a case where the investigation is not completed within the stipulated period. The relevant observation is as under:

".....When an undertrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may, the Magistrate must, before making an order of further remand to judicial custody, point out to

> the undertrial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the undertrial prisoner with a view to enable him to apply for bail in exercise of his right under proviso (a) to sub-section (2) of Section 167 and the Magistrate must take care to see that the right of the undertrial prisoner to the assistance of a lawyer provided at State cost is secured to him and he must deal with the application for bail in accordance with the guidelines laid down by us in our Order dated 12th February, 1979."(Emphasis supplied by me).

While dealing with question of fundamental rights guaranteed under Article 21 of the Constitution of India, the Apex Court in the judgment in case of A.R. Antulay v. R.S. Nayak, AIR 1988 SC 1531, has held that no man is above law but at the same time no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it and that while passing any order there shall be no deviation from Article 21 of the Constitution. When the court is dealing with question of liberty and freedom of any citizen should always be guided by the procedure laid down under Article 21 of the Constitution. Thus observation was made by Supreme Court while dealing with question of denial of right under Article 21 of the Constitution and grant of equal protection of law. The Supreme Court has also held that even if any wrong is done by court unconsciously or unintentionally, the same can be corrected if brought to note so as to ensure protection of rights under Articles 14 and 21 of the Constitution of India.

Contention No.1:

Mr. Keshwani has argued that Section 167 of the Code expressly does not provide for making written application for bail when a right has accrued on account of default in completing investigation within stipulated period hence the Court should exercise it suo motu and enlarge the accused on bail. This has to be appreciated in light of present judicial system of adversary. According to our judicial system, always there are two parties and any order has to be passed after hearing both of them as required by principles of natural justice. In order to afford an opportunity to the adversary, contentions and allegations are always required to be made known so that can be dealt with on merits. This can only be done if allegations are made in writing and are communicated to

the adversary. Thus, an application in writing would be necessary to avail of the benefit under Section 167 (2) (a) of the Code so as to enable Court to pass appropriate order in accordance with law. If the right invoked by the petitioner is statutory and indefeasible, the Court may ignore objection. Where as if the right is discretionary or equitable the court may consider rival contentions and pass order in its prudence and wisdom and in accordance with law.

In recent past, on several occasions, the Apex Court had opportunity of interpreting and examining scope of Section 167 of the Code. A careful reading of all those judgments provide an answer to the contention raised by Mr. Keshwani. In the case of Sanjay Dutt v. The State through C.B.I., Bombay, JT 1994 (5) S.C. 540, = (1994) 5 SCC, 410, the Supreme Court has made following observations in paragraph 57 (2) (b):

> "(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20 (4)(bb) of the TADA Act read with Section 167 (2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage." (Emphasis supplied by me).

In another landmark decision in the case of Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, the Supreme Court has made following observations in paragraph 21:

> "21. Thus, we find that once the period for

> filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20 (4) TADA read with Section 167 of the Code, the court must release the accused on bail on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/prosecuting agency and once such an application is made, the court should issue a notice to the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (bb) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default' (emphasis supplied). The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings."

The tenor of the aforesaid judgment is that default in completing investigation within stipulated period gives rise to an indefeasible right in favour of an accused to seek bail and in such situation the court is duty bound to inform him to enable him to make application. But release on bail is not automatic. In other words, when the right accrues the accused has to move an application to get benefit thereof.

Relying upon the judgment Sanjay Dutt's case (supra), the Supreme Court has also taken similar view in the case of State of M.P. v. Rustam, 1995 SCC (Cri) 830. In this judgment also the Supreme Court has held that the court

is required to examine the availability of right to compulsive bail on the date it is considered the question of bail and not barely on the date of presentation of the petition for bail. This amply suggests that in order to avail of indefeasible right accruing under Section 167 (2) the accused has to make an application.

In the case of Mohamed Iqbal Madar Sheikh v. State of Maharashtra, 1996 SCC (Cri) 202, placing reliance upon the judgments in Sanjay Dutt's case (supra) and Hitendra Vishnu Thakur's case (supra), the Supreme Court in paragraph 11 of its judgment has observed that unless application has been made on behalf of the appellant (accused) there was no question of their being released on bail on the ground of default in completion of investigation within stipulated period.(Emphasis supplied by me).

As regards procedure to be adopted on accruing to indefeasible right, the Supreme Court is consistent in its view that accused has to make application. In paragraph 4 of the judgment in the case of Dr. Bipin Shantilal Panchal v. State of Gujarat, 1996 SCC (Cri) 200, it is observed that if the accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time. While making this observation, reliance is also placed on the judgments in Sanjay Dutt's case (supra) and Hitendra Vishnu Thakur's case (supra). The fact that in order to avail indefeasible right the accused person has to exercise it which can only be done by making a written application. Thus, in my view, the contention of Mr. Keshwani is illfounded and does not require any further consideration in light of series of judgments of Supreme Court referred to above. The judgments clearly indicate that it is necessary to make an application in order to exercise the right accrued on account of default in completing investigation within the statutory period of 60 days or 90 days as the case may be. Thus, the contention that in order to exercise the right no written application is required to be made is devoid of merits and is hereby rejected.

In support of his contention, Mr. Keshwani has also relied upon Full Bench decision of Punjab & Haryana High Court in the case of Baldev Singh v. State of Punjab, 1975 Cr.L.J. 1662 wherein in paragraph 8 it is observed that irrespective of moving an application on behalf of accused, statute provides that the accused person be

released on bail if he is prepared to furnish the same. While dealing with the scope of Section 167 of the Code and the nature of right accrues in favour of accused in case of default in completing investigation within the statutory period the Madras High Court in the case of Judu @ Daswaran v. State of Tamil Nadu, 1991 (2) Crimes, 243, has also taken similar view that though an order of bail might not been passed by Magistrate and the accused not been communicated of his right to bail but it must be deemed to have been made automatically by the Magistrate and the only thing required to be done is to communicate to the accused but in my view the ratio laid down by the aforesaid two judgments does not hold good in view of series of judgments of Supreme Court referred to in above paragraphs (supra) which clearly say that it is incumbent upon the accused to make application in order to avail of indefeasible right of compulsive bail.

Mr. Keshwani has also relied upon unreported judgment delivered by this Court (Coram: B.C. Patel, J.) on 31.3.1994 in Misc. Criminal Application No.694 of 1994 with Misc. Criminal Application No.757 of 1994 wherein on pages 38 and 39 it is observed that the Magistrate must inform the accused about his right and if the accused is prepared to and does furnish bail, then the accused should be released on bail. It is further held that the accused be informed of his right and the Magistrate must pass an order in accordance with law. Emphasising the words "Magistrate must inform the accused about his right" and "Magistrates must pass an order", Mr. Keshwani has argued that passing order is automatic and the accused is not required to make any application. As a cardinal rule of interpretation, any observation made in judgment should not be read in isolation and divorced from the context in which it is made. Any observation has to be read in light of facts and circumstances and the controversy. The judgment deals with the nature of right accruing and consequent duty of Magistrate to inform accused of his such right. The Court has nowhere said that no such application is required to be made. Whether an application is required to be made was not the question before Court. The Court has emphasised that on expiry of the statutory period the Magistrate must inform the accused of his right of compulsive bail irrespective of merits and nature of offence. Apart from this fact, the Supreme Court has dealt with this aspect in Sanjay Dutt's case (supra) and Hitendra Vishnu Thakur's case (supra) and in Mohamed Iqual Madar Sheikh's case (supra). Thus the unreported judgment of this Court as relied by petitioner does not throw any light on the contention under consideration.

Relying upon the observations made in paragraph 12 of the judgment in the case of Rajnikant v. Intelligence Officer, AIR 1990 SC 71, Mr. Keshwani vehemently argued that in case of compulsive bail the process of releasing on bail is automatic and no written application is required to be made but as discussed above, this aspect has already been clarified by Supreme Court in its subsequent judgments (supra) holding that accused must make application to avail of the indefeasible right. The main question before the Court was about cancellation of bail granted under default clause. It was held that on filing of charge-sheet the bail granted invoking default clause can be cancelled. But this view has been over ruled in a subsequent judgment in the case of Aslam Babalal Desai v. State of Maharashtra, AIR 1993 SC 1 (supra), holding that once the accused is released on bail under Section 167 (2) he cannot be taken back in custody merely on the filing of a charge-sheet but there must exist special reasons germane to cancellation besides the fact that the charge-sheet reveals commission of a non-bailable crime.

Contentions No.2 and 3:

Since both these contentions are interwoven are decided together in order to avoid repetition of facts and observations. Partly both these contentions stand answered in light of observations made by me hereinabove while dealing with contention No.1. By this time the law is well settled that in order to get benefit of compulsive bail under Section 167 of the Code the petitioner has to make an application which the court must entertain irrespective of merits. It is true that the investigation is to be completed within the stipulated period of 60 or 90 days, as the case may be, but if the prosecution fails to complete investigation then immediately on expiry of such period, indefeasible right of bail accrues in favour of accused and the accused has to be informed by the Magistrate of his such right so that he may apply before the right gets extinguished. In paragraph 20 of the judgment in the case of Hitendra Vishnu Thakur (supra), the Court has held that it is obligatory on the part of the Court and a duty is also cast that the accused be informed of his right of being released on bail so as to enable him to make application in that behalf. In Hussainara Khatoon's case (supra) the Supreme Court has also held that before making order of further remand to judicial custody, the Magistrate must point out to the undertrial prisoner that

he is entitled to be released on bail. Even in the case of Aslam Babalal Desai v. State of Maharashtra, AIR 1993 SC 1, the Supreme Court has held that right of bail under Section 167 (2) (a) is absolute. It is a legislative command and not court's discretion. When the right is in the nature of legislative command it is always obligatory on the part of Magistrate to inform the accused before passing any contrary order. Consequently, I find substance in the contention that on expiry of statutory period and when the compulsive bail right accrues in favour of the accused, the courts must inform the accused of his such right so as to enable him to apply and exercise but such is an obligation and duty cast upon courts ipso facto does not lead to hold that right to be released on bail is automatic and one need not to apply. Once the accused is informed and if he applies then court has to pass appropriate orders irrespective of merits if the right so accrued does not get extinguished.

The right to be released on bail during its survival is again subject to condition that the accused must be prepared to and does furnish surety and requisite bail bonds. The section itself is very clear because in Section 167 (2) (a) (ii) the words written are "shall be released on bail if he is prepared to and does furnish bail". However, the position has been made clear by the Supreme Court in judgment in the case of Rajnikant v. Intelligence Officer, AIR 1990 SC 71.

Mr. Keshwani has further argued that once indefeasible right of compulsive bail accrues in favour of accused remains in force and cannot be taken away by subsequent filing of charge-sheet. In other words, it is his argument that in case where the charge-sheet is filed after statutory period, the right which has accrued in favour of accused on expiry of period remains in force and the court has to pas appropriate order irrespective of fact that at a subsequent stage charge-sheet has been filed. This contention has no force in light of observations made by Supreme Court in Sanjay Dutt's case (supra) wherein it is observed that it is a right which ensures to and enforceable by accused only from the time of default till the date of filing of challan and does not remain on challan being filed. Thus, it becomes crystal clear that the right accrued gets extinguished the moment challan is filed even after expiry of period. In other words, when the court is called upon to decide the application for compulsive bail if the challan is filed and is placed before the court then such application would only be governed by the ordinary

provisions relating to grant of bail under the Code and not under Section 167 (2) of the Code. Therefore, in light of this observation by Supreme Court, ratio laid down by decision of Punjab & Haryana High Court in the case of Barjang v. State of Haryana, 1996 (1) Crimes, 181 (H.C.) does not lay down a good law. In the present case, the charge-sheet was filed on 12.12.1995. Undisputedly the charge-sheet was filed beyond the period of 60 days which expired on 18.11.1995 and, therefore, indefeasible right of compulsive bail had accrued in favour of accused w.e.f. 19.11.1995 and remained in force till 12.12.1995. The first application was filed on 6.12.1995 and was decided on 14.12.1995. Thus, the day on which the application was decided, the court was seized of the challan and, therefore, right so accrued got extinguished. The second bail application was filed on 20.12.1995 and decided on 3.1.1996. Admittedly, the second bail application was filed and decided after the challan was filed and, therefore, the right which first accrued got extinguished on 12.12.1995 and, therefore, the lower court was right in deciding the application on merits irrespective of mandate of Section 167 (2) of the Code because the right was not in force. Thus, in my view, the lower court has not committed any error in deciding both the applications on merits. The impugned orders do not suffer from any illegality or impropriety and do not warrant any interference.

Relying upon judgment in Mohamed Iqbal Madar Sheikh (supra), it is argued that in a case where the right of compulsive bail is accrued in favour of the accused and if the accused applies for bail then without adjourning the matter, the court should grant order of bail. My attention is drawn to observation made in paragraph 12 which reads as under:

> "12. During hearing of the appeal, it was pointed out by the counsel appearing on behalf of the appellants that some courts in order to defeat the right of the accused to be released on bail under proviso (a) to Section 167 (2) after expiry of the statutory period for completion of the investigation, keep the applications for bail pending for some days so that in the meantime, charge-sheets are submitted. Any such act on the part of any court cannot be approved. If an accused charged with any kind of offence becomes entitled to be released on bail under proviso (a) to Section 167 (2), that statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted so

that the right which had accrued is extinguished and defeated." (Emphasis supplied by me).

It is true that the Courts should not be party to such an act which may deprive any citizen of his fundamental right of freedom and liberty or that should not be one which may deprive any person of his statutory right which has accrued. Therefore, keeping in background this aspect any such endeavour on the part of court is disapproved by Supreme Court but that does not mean that on such application being filed the courts should not call upon adversary while deciding the matter. Similar contention was also raised before Supreme in Hitendra Vishnu Thakur's case (supra). In paragraph 21, it is observed that issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. Therefore, even if an application is moved by accused invoking default clause, it is obligatory on the part of the courts to issue notice to other side and decide application after hearing but while doing so utmost care should be taken that the hearing of such application should not be unnecessarily protracted with a view to afford opportunity to prosecution to file challan and deprive accused of his statutory right and, therefore, while deciding application of compulsive bail hearing should not be adjourned from time to time and should be decided at the earliest. In other words, while deciding such applications there shall not be unnecessary delay. Of course, the courts would be justified in adjourning the matter for reasonable time having regard to other exigencies. Issuance of notice and hearing other side would be necessary to serve ends of justice. Thus, both these contentions stand answered accordingly.

Conclusions:

1. In order to avail of right of compulsive bail, accused has to make an application in writing. The right so accruing is not automatic warranting court to release accused on bail without any application.

2. On such application being filed, notice has to be served to the other side to meet the ends of justice and avoid possibility of obtaining order either by deliberately or inadvertently concealing certain facts and also to avoid multiplicity of proceedings.

3. Hearing of such application should not be unnecessarily protracted and should be disposed of without any delay, of course, having regard to the procedure.

4. The accused shall be released on bail if he is prepared and does furnish bail bonds.

5. Before making any order of further remand to judicial custody beyond the statutory period, the Magistrate must inform and point out to the undertrial prisoner about his indefeasible right to be released on bail under proviso (a) to Section 167 (2).

6. The indefeasible right of accused to be released on bail accruing on default of investigation, gets extinguished on filing of charge-sheet and, therefore, while deciding bail application if the charge-sheet is filed though beyond statutory period, the same shall be decided on merits in accordance with provisions governing grant of regular bail.

In light of aforesaid discussion, the Revision Application is devoid of merits and deserves to be dismissed and is hereby dismissed. Rule discharged.